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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

NO. 88-538

PHILIP J. BROWN, et al.,

Petitioners

v.

1250 TWENTY-FOURTH STREET ASSOCIATES LIMITED PARTNERSHIP, et al.,

Respondents

PETITIONERS' REPLY MEMORANDUM

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November 8, 1988

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INTRODUCTION

In opposing Petitioners' request for a grant of certiorari, Respondent 1250 Twenty-Fourth Street Associates Limited Partnership makes a number of factually misleading statements pertaining to the fraud uncovered by Petitioners and Petitioners' attempts to bring evidence of such fraud to the attention of the court.

Although Respondent's rewriting of the record should have no bearing upon this Court's consideration of the reasons for granting a writ of certiorari, the erroneous statements made by Respondent should not go unanswered. In order to set the record straight, Petitioners hereby submit the following reply.

ARGUMENT

This case presents the issue of whether the lower courts have abdicated their responsibility by failing to grant relief from judgment, pursuant to Rule 60(b), Fed. R. Civ. P., when presented with evidence of fraud committed upon the Petitioners while they were under the protection of the Federal Bankruptcy Courts. In the proceedings below, Petitioners presented evidence that a crucial document -- the First Amendment to a Ground Lease ("the First Amendment") for property located at 1250 24th Street, N.W., Washington, D.C. -- had been fraudulently

executed and this fraudulently executed document had later been confirmed by the Bankruptcy Court as part of the plan of arrangement for the Petitioners.

The reports of document experts presented by Petitioners in the proceedings below establish that the purported signature of "Philip J. Brown" on the First Amendment was a forgery. This fraud certainly is not an insignificant matter because, by confirming the plan of arrangement, the Bankruptcy Court gave its imprimatur to the agreement which contained the forged signature. In essence, the evidence presented by Petitioners in these proceedings leads to the inescapable conclusion that a fraud has been committed upon the federal courts.

I. Respondent Failed To Acknowledge The Financial Tie Between Respondent And Petitioners' Former Counsel.

Respondent apparently recognizes the strength and seriousness of Petitioners' claim because, in opposing the grant of

certiorari, Respondent goes to great length in questioning Petitioners' evidence that a forgery has been committed.[1] In attempting to raise doubts as to whether Philip Brown's signature has been forged on the First Amendment, Respondent makes much of the fact that the document in question indicates that the forged signature of "Philip J. Brown" apparently was witnessed by Mr. Brown's then-counsel, Nicholas A. Addams, Esquire.[2]

In an attempt to minimize the undisputed reports of Petitioners' document experts, Respondent questions why

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[1] Petitioner recognizes that the factual question of whether a forgery and fraud actually has been committed is not relevant in determining whether this Court should grant the petition. However, when faced with misleading factual statements in Respondents' opposition, Petitioners feel obligated to right the record before this Court.

[2] The importance Respondent attaches to this circumstance is emphasized by the repeated reference in Respondent's opposition. Respondent makes this point no less than three separate times in its 14-page opposition.

Petitioners have proffered no explanation for Mr. Addams' apparent witnessing of the forged signature of Philip J. Brown. Respondent's question, of course, would be the subject of factual inquiry upon the reopening of these proceedings, pursuant to Rule 60(b), Fed. R. Civ. P. -- a result Respondent so vigorously argues against in its opposition. Put simply, Respondent cannot have it both ways: on one hand, contending that Petitioners have not presented enough evidence of all the circumstances under which Philip J. Brown's signature was forged and, on the other hand, attempting to deny Petitioners the opportunity to develop such evidence.

Moreover, Respondent's emphasis upon Mr. Addams' conduct is worthy of note. In its opposition, Respondent gives the impression that Mr. Addams' sole role was that of an advocate for Petitioners. Significantly, Respondent makes no mention of the close financial ties between Mr.

Addams and the Kaempfer Company, which Respondent acknowledges was its predecessor in interest.

At the time the First Amendment to the Ground Lease purportedly was executed on December 23, 1983, Mr. Addams had received substantial monies for the payment of his legal expenses, the source of which monies was the Kaempfer Company. Indeed, just two days before the First Amendment was purportedly executed, Mr. Addams signed a modification to a deed of trust giving the Kaempfer Company a mortgage interest in Addams'' office building at 1707 N Street, N.W., Washington, D.C.[3] This modification was given to the Kaempfer Company to secure the payment of notes between Ruth Brown and

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[3] Petitioners only recently learned of the existence of this mortgage, which turned up during the course of document production in an unrelated legal proceeding. Mr. Addams never informed Petitioners that the Respondents held a deed of trust on his office building, nor that two partners in the law firm representing Respondents were the trustees on this deed. See Discussion, infra.

the Kaempfer Company. According to the terms of the modification, the Kaempfer Company had "loaned" $100,000 to Mrs. Brown and a portion of the proceeds of said "loan" was acknowledged to have been paid to Mr. Addams for past and current legal fees.[4]

It is even more curious that counsel for Respondent makes no mention of Mr. Addams' financial ties with the Kaempfer Company in light of the fact that two senior partners in the law firm representing Respondent -- Stephen W. Porter, Esquire and Dennis M. Horn, Esquire -- are listed as trustees for the deed of

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[4] There is an interesting connection between the modification to the deed of trust and the First Amendment to the Ground Lease. The signature of Mr. Addams and his wife on the deed of trust bears the notarial seal of a "Donald R. Harrell." The name of Mr. Harrell as a notary also appears on the First Amendment, which is the disputed document here. As noted in the Petition for a Writ of Certiorari, Philip Brown believes that the notarial certificate pertaining to his alleged signature on the First Amendment also is false.

trust.[5] Thus, although Respondent would now like to portray Mr. Addams as being solely in Petitioners' court, the evidence that his fees were being paid by the Respondent and that Respondent was holding a deed of trust on Mr. Addams' office building certainly gives a quite different appearance.

In opposing the grant of a petition for certiorari, it is at the very least disingenuous for Respondent to emphasize Mr. Addams' role in these matters and conveniently leave out the fact that payment of his legal fees was coming from Respondent's purse. The financial tie between Mr. Addams and Respondent presents an appearance, if not an actual, conflict of interest. This conflict obviously was

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[5] Stephen W. Porter and Dennis M. Horn, respectively, are general and limited partners in D & P Associates Limited Partnership, which is a 10% limited partner in Respondent 1250 Twenty-Fourth Street Associates Limited Partnership. Wearing their caps as attorneys, these two individuals negotiated the lease and the First Amendment on behalf of Respondent.

known to Respondent, since Respondent held the deed of trust on Mr. Addams' office building, but the conflict never was revealed either to Petitioners or to the courts when they were considering this matter. Indeed, these financial entanglements, far from indicating that a writ of certiorari should be denied, mandate that this Court, as the forum of last resort, exercise its duty to insure and preserve the integrity of judicial proceedings.

II. Petitioners Did Not Delay Bringing Evidence Of Forgery To The Attention Of The Courts.

Respondent also attempts to rewrite the record in the proceeding below by contending that "Petitioners still have not presented any explanation for the delay" between their discovery of the forgery in December, 1986 and the filing of a motion for relief from judgment with the district court on May 12, 1987. (Brief of Respondent in Opposition at 12).

Respondent conveniently forgets that, as set forth in the Petition for a Writ of Certiorari, upon discovering the forgery Petitioners acted expeditiously to retain two document experts to examine the First Amendment. After these document examiners presented initial reports confirming that the signature of "Philip J. Brown" had been forged, Petitioners acted promptly by filing a Petition for Reconsideration with the Court of Appeals on January 14, 1987. Approximately one month later, on February 17, 1987, the Court of Appeals denied the petition without prejudice to Petitioners bringing the matter before the district court. (App-1 - App-2 to Appendix to Petition for a Writ of Certiorari).

Rather than immediately refiling their motion with the district court, the Petitioners acted in a prudent and reasonable fashion by seeking a second opinion from their noted document expert, Dr. David Crown, former chief of the

Central Intelligence Agency's questioned document laboratory. Significantly, Dr. Crown's second report raises further questions concerning the preparation of the First Amendment, and his report emphasizes that examination of the original document is "essential".[6] Based upon both the initial and second confirming reports, Petitioners on May 12, 1987 then filed their motion for relief from judgment with the district court.

Far from indicating any lack of diligence on Petitioners' part, the time period between the issuance of the Court of Appeals' Order on February 17, and Petitioners' filing of a motion for relief from judgment with the district court on May 12, 1987, was used to obtain additional evidence concerning the forgery of Philip J. Brown's signature and other questionable aspects pertaining to the preparation of

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[6] It is not without significance that Respondents have yet to produce the original of this document.

the First Amendment. This additional evidence was presented to the district court as part of Petitioners' motion for relief from judgment.

Respondent, of course, is intimately familiar with the procedural history of this case. For Respondent to contend before this Court that Petitioners "waited an unreasonable time" to file their motion for relief of judgment after December, 1986 is nothing more than a blatant misstatement of the record. (Brief of Respondent in Opposition at 12).

CONCLUSION

Despite Respondent's charges that Petitioners have distorted the record and fabricated intercircuit conflicts, in truth, the distortions and fabrications have a different source. In requesting a writ of certiorari, Petitioners demonstrated that the District Court, as affirmed by the Court of Appeals, improperly interpreted the term "newly

discovered evidence" in denying Petitioners' relief for judgment under Fed. R. Civ. P. 60(b).

Petitioners also have demonstrated that the evidence of forgery and fraud implicates the integrity and sanctity of judicial proceedings. Public confidence in the judiciary is a matter with which this Court is wisely concerned. See Liljeberg v. Health Services Corporation, 486 U.S. ___, 100 L.Ed.2d 855, 108 S.Ct. ___ (1988); Klapprott v. United States, 335 U.S. 601, 614-615 (1949) (Rule 60(b) provides courts with authority "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice").

Petitioners respectfully submit that in order to accomplish the ends of justice, a petition for a writ of certiorari should be granted.

Respectfully submitted,

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